

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EARL HAWKINS,

Plaintiff,

VS.

**KIZMET RUTH AND THE UNITED
STATES OF AMERICA D/B/A THE
UNITED STATES POSTAL SERVICE,
Defendants.**

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CASE NO.

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW, EARL HAWKINS, Plaintiff in the above-entitled and numbered cause of action, complaining of Defendants, KIZMET RUTH AND THE UNITED STATES OF AMERICA D/B/A THE UNITED STATES POSTAL SERVICE, and in support thereof would respectfully show the Court as follows:

**I.
PARTIES**

1.1 Earl Hawkins ("Plaintiff") is a resident of Dallas, Dallas County, Texas.

1.2 Kizmet S. Ruth ("Defendant Ruth") is an individual resident of the State of Texas who has been served with process. No answer by Kismet Ruth has been filed.

1.3 The United States of America may be served by delivering a copy of the summons and of the complaint by certified mail, return receipt requested, to the United States Attorney for the Northern District of Texas at:

**CIVIL PROCESS CLERK
U.S. ATTORNEY FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION
100 COMMERCE STREET, THIRD FLOOR**

DALLAS, TEXAS 75242

and by also sending a copy by certified mail, return receipt requested, to the Attorney General of the United States at:

**ATTORNEY GENERAL OF THE UNITED STATES
U.S. DEPARTMENT OF JUSTICE
950 PENNSYLVANIA AVE., NW, ROOM B-103
WASHINGTON, D.C. 20530.**

and by also sending a copy by certified mail, return receipt requested, to the Postmaster General of the United States at:

**UNITED STATES POSTMASTER GENERAL
U.S. POSTAL SERVICE
475 L'ENFANT PLAZA, SW,
WASHINGTON, DC 20260.**

**II.
JURISDICTION and VENUE**

2.1 Venue of this case is proper in the Northern District of Texas, pursuant to 28 U.S.C. §1391(e), as the United States Of America d/b/a The United States Postal Service is a defendant and a substantial part of the events or omissions giving rise to the claim occurred in this district.

2.2 Venue is proper under 28 U.S. Code § 1339(b)(2) because the events giving rise to this suit occurred in Dallas County, located the Northern District of Texas.

**III.
CLAIM FOR RELIEF**

3.1 This action is brought pursuant to the authority granted by 39 Code of Federal Regulations § 912.2 and the Federal Tort Claims Act, Title 28, Chapter 171 of the U.S. Code.

3.2 The court has jurisdiction over the lawsuit according to 28 U.S.C. § 1332 because this is a suit under the Federal Tort Claims Act, 28 U.S.C. § 1346.

3.3 Plaintiff's claim for monetary relief is \$500,000.

3.4 Pursuant to 28 U.S.C. §2672 and §2675(a), Plaintiff pleads that the claim set forth herein was filed with and presented administratively by Standard Form 95. The United States Postal Service has failed to make a final disposition of the claim within six months of presentment. Accordingly, Plaintiff has complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

IV. **FACTS**

4.1 On or about November 15, 2022, Plaintiff was traveling in his vehicle in Dallas, Texas on Live Oak Street. Plaintiff was stopped at a red traffic signal. Suddenly and without warning, Defendant Kizmet Ruth, a United States Postal Service employee and employee of the government, who was actively carrying out duties for the United States Postal Service, struck the rear of Plaintiff's vehicle with the United States Postal Service vehicle she was operating. The United States Postal service is a federal agency. This collision caused severe injuries to Plaintiff.

V. **NEGLIGENCE**

5.1 On the occasion in question, Defendant Ruth operated a vehicle in a negligent manner and violated the duty of care owed to the Plaintiff to exercise ordinary care in the operation of a motor-vehicle, as follows:

- a. In failing to maintain a proper lookout as a person of ordinary prudence would have maintained under the same or similar circumstances;
- c. In failing to control the operation of said vehicle;
- d. In failing to avoid the incident in question;

- e. In operating the vehicle in an unsafe manner;
- f. By driving at a speed greater than reasonable and prudent under the circumstances
- g. Other acts or negligence and/or negligence per se.

5.2 As a result, the Plaintiff is entitled to recover such damages as may be awarded by the trier of fact.

5.3 Texas state law of negligence provides the rules of decision in this matter under 28 U.S. Code § 1652.

VI.

RESPONDEAT SUPERIOR

6.1 At all times material to this lawsuit, Kizmet S. Ruth was an employee of United States Postal Service and was acting within the course and scope of that employment. Consequently United States Postal Service is vicariously liable to Plaintiff for the negligent and/or negligent per se conduct of Kizmet S. Ruth under the doctrine of *respondeat superior*.

VII.

NEGLIGENT HIRING/TRAINING/SUPERVISION/ENTRUSTMENT

7.1 Plaintiff would show that said collision made the basis of this lawsuit resulted from the negligence of United States Postal Service. Such negligent and/or negligent *per se* acts or omission include, but are not limited to the following:

- a. hiring and/or retaining Kizmet S. Ruth, whom it knew or should have known was a reckless or incompetent driver;
- b. entrusting a vehicle to Kizmet S. Ruth, whom it knew or should have known was a reckless or incompetent driver;
- c. failing to properly investigate Kizmet S. Ruth's driving and employment history;

- d. failing to properly train Kizmet S. Ruth;
- e. failing to properly supervise Kizmet S. Ruth's driving activities;
- f. failing to maintain the vehicle involved in the collision in proper working;
- g. failing to properly repair the vehicle involved in the collision;
- h. failing to properly inspect the vehicle involved in the collision in question;
and
- i. other acts of negligence and/or negligence *per se*.

7.2 One, some, or all of the foregoing acts and/or omissions or others on the part of United States Postal Service constituted negligence and/or negligence *per se* and such negligence and/or negligence *per se* was a proximate cause of the occurrence and Plaintiff's injuries and damages.

VIII. DAMAGES

8.1 As a result of the incident made the basis of this lawsuit described in the preceding paragraphs and the negligence and/or negligence *per se* of Defendants, Plaintiff sustained significant injuries and damages in the past and will in reasonable probability sustain these damages in the future.

8.2 Plaintiff respectfully requests that the trier of fact determine the amount of the damages and losses that he incurred in the past and will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to:

- a. Physical pain and mental anguish;
- b. Disfigurement;
- c. Physical impairment;

- d. Medical care expenses;
- e. Loss of earning capacity; and
- f. Out-of-pocket economic losses.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recover damages in accordance with the evidence and for such other further relief, both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

By:  _____
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